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10/582,146	03/19/2007	Jerome Foy	54862/330868	8834
23370 7590 01/07/2009 JOHN S. PRATT, ESQ KILPATRICK STOCKTON, LLP 1100 PEACHTREE STREET ATLANTA, GA 30309				
EXAMINER				
YOKAY, ERIN P				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/582,146

**Applicant(s)**

FOY, JEROME

**Examiner**

ERIN YOKAY

**Art Unit**

4137

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 07 June 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-45 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 07 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-893)  
4) ☐ Interview Summary (PTO-413)  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date 7/5/2006

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 7/5/2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Examiner has considered the foreign patent France 2709144 and has included the reference in the Notice of References Cited and has included a copy of the patent. Examiner has not considered ITRM 20030404D because a copy was not provided by the applicant and one was not readily available to the examiner.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8, 12-14, 16-19, 45 are rejected under 35 U.S.C. 102(b) as being anticipated by FR Patent 2709144 to Alain.

Regarding Claim 1

(Original) An above-ground swimming pool comprising:  
structural paneling 34 defining a pool perimeter;  
a plurality of structural vertical posts 28 regularly spaced apart along the pool perimeter and retaining the structural paneling 34;  
a structural ledge 24 supported by the structural vertical posts 28 and retaining the structural paneling 34 at a top end thereof along the pool perimeter; and  
a plurality of decorative panels 27/37/39/38 installed so as to substantially hide the structural paneling from view.

Regarding Claim 2

(Original) The above-ground swimming pool according to claim 1, further comprising a base member 1 retaining the structural paneling 34 at a bottom end thereof along the pool perimeter.

Regarding Claim 3

(Original) The above-ground swimming pool according to claim 2, wherein the base member 1 also retains the decorative panels 27/37/39/38 at a bottom end thereof along the pool perimeter.

Regarding Claim 4

(Original) The above-ground swimming pool according to claim 1, wherein the structural ledge 24 retains the decorative panels 27/37/39/38 at a top end thereof along the pool perimeter.

Regarding Claim 5

(Original) The above-ground swimming pool according to claim 1, wherein a single decorative panel 37 extends between and is retained by adjacent structural vertical posts 28.

Regarding Claim 6

(Original) The above-ground swimming pool according to claim 1, wherein a plurality of decorative panels 27/37/39/38 connected to one another extend between and are retained by adjacent structural vertical posts 28.

Regarding Claim 7

(Original) The above-ground swimming pool according to claim 6, wherein the plurality of decorative panels 27/37/39/38 are connected to one another side by side.

Regarding Claim 8

(Original) The above-ground swimming pool according to claim 6, wherein the plurality of decorative panels 27/37/39/38 are connected to one another one on top of the other.

Regarding Claim 12

(Original) The above-ground swimming pool according to claim 1, wherein the structural ledge 24 is hidden from view by a decorative ledge 18.

Regarding Claim 13

(Original) The above-ground swimming pool according to claim 12, wherein the decorative ledge 18 retains the decorative panels 27/37/39/38 at a top end thereof along the pool perimeter.

Regarding Claim 14

(Original) The above-ground swimming pool according to claim 1, wherein each of the decorative panels 27/37/39/38 is shaped so as to mimic a series of horizontal wood boards.

Regarding Claim 16

(Original) The above-ground swimming pool according to claim 1, wherein each of the decorative panels 27/37/39/38 is shaped so as to mimic a single wood board.

Regarding Claim 17

(Original) The above-ground swimming pool according to claim 1, wherein the pool perimeter is round, and the decorative panels 27/37/39/38 are at least in partial contact with the structural paneling 34 so as to define a second round perimeter in close

relationship with the pool perimeter.

Regarding Claim 18

(Original) The above-ground swimming pool according to claim 1, wherein the pool perimeter is polygonal, and the decorative panels 27/37/39/38 are at least in partial contact with the structural paneling 34 so as to define a second polygonal pool perimeter in close relationship with the pool perimeter.

Regarding Claim 19

(Original) The above-ground swimming pool according to claim 1, wherein the decorative panels 27/37/39/38 are installed so as to obtain a second perimeter having a different shape than the pool perimeter.

Regarding Claim 45

(Original) An above-ground swimming pool comprising a skeleton structure adapted to hold a body of water, and a decorative panel 27/37/39/38 assembly applied to the pool outwardly of the skeleton structure.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9-11, 24-30, 32, 33 are rejected under 35 U.S.C 103(a) as being unpatentable over Alain in view of US Patent No. 5,866,264 to Glonek.

Regarding Claim 9

Alain teaches:

(Original) The above-ground swimming pool according to claim 1,

Alain fails to disclose:

wherein each structural vertical post is hidden from view by a decorative vertical post.

Glonek teaches:

wherein each structural vertical post 14 is hidden from view by a decorative vertical post 12.

It would be obvious to one having ordinary skill in the art at the time of the invention to have made the incorporated the decorative posts of Glonek to cover the structural posts into the cover design of Alain because covering the structural posts make the design much more aesthetically pleasing. The extra support of the decorative post also gives the structural post more strength in holding up other parts of the pool.

Regarding Claim 10

(Original) The above-ground swimming pool according to claim 9, wherein a single decorative panel (Alain, 37) extends between and is retained by adjacent decorative vertical posts 12.

Regarding Claim 11

(Original) The above-ground swimming pool according to claim 9, wherein a plurality of decorative panels (Alain, 27/37/38/39) connected to one another extend between and are retained by adjacent decorative vertical posts 12.

Regarding Claim 24

(Original) A decorating kit for an existing above-ground swimming pool, the swimming pool including structural paneling, a plurality of structural vertical posts and a top structural ledge, the kit comprising:

a plurality of decorative vertical posts 12 designed to be attached over the structural vertical posts 14 so as to substantially hide the structural vertical posts from view;

a plurality of decorative panels (Alain, 27/37/38/39) designed to be retained by adjacent decorative vertical posts 12 so as to substantially hide the structural paneling (Alain, 33) from view; and a decorative ledge 108 designed to be attached to the decorative vertical posts 12 so as to substantially hide the top structural ledge 42 from view.

Regarding Claim 25

(Original) The kit according to claim 24, wherein the decorative ledge 18 retains the decorative panels A at a top end thereof.

Regarding Claim 26

(Original) The kit according to claim 24, wherein each decorative panel is composed of a plurality of smaller panels 27/37/39/38 connected to one another.

Regarding Claim 27

(Original) The kit according to claim 26, wherein each of the smaller panels 27/37/39/38 is shaped so as to mimic a single wood board.

Regarding Claim 28

(Original) The kit according to claim 26, wherein the plurality of smaller panels 27/37/39/38 are connected to one another side by side.

Regarding Claim 29

(Original) The kit according to claim 26, wherein the plurality of smaller panels 27/37/39/38 are connected to one another one on top of the other.

Regarding Claim 30

(Original) The kit according to claim 24, wherein each of the decorative panels A is shaped so as to mimic a series of horizontal wood boards.

Regarding Claim 32

(Original) The kit according to claim 24, wherein the structural paneling 34 defines a pool perimeter, and the decorative panels are at least in partial contact with the structural paneling 34 so as to define a second pool perimeter in close relationship to the pool perimeter.

Regarding Claim 33

(Original) The kit according to claim 24, wherein the structural paneling defines a pool perimeter, and the decorative panels 27/37/39/38 are installed so as to obtain a second perimeter having a different shape than the pool perimeter.

6. Claims 15, 22, 23, 31, 36-44 are rejected under 35 U.S.C 103(a) as being unpatentable over Modified Alain.

Regarding Claim 22

(Original) The above-ground swimming pool according to claim 9, wherein each decorative vertical post (Glonek, 12) is shaped so as to mimic at least one wood board.

It would be obvious to one having ordinary skill in the art at the time of the invention to have made the decorative posts of Modified Alain to look like wood boards because the intent of the decorative post was to enhance to look of the design, and making it look like wood would just be a simple aesthetic change to allow the decorative post match the rest of the structure.

Regarding Claim 36

(Original) The kit according to claim 24, wherein each decorative vertical post (Glonek, 12) is shaped so as to mimic at least one wood board.

Regarding Claim 23

(Original) The above-ground swimming pool according to claim 12, wherein the decorative ledge 18 is shaped so as to mimic a plurality of wood boards.

It would be obvious to one having ordinary skill in the art at the time of the invention to have made the decorative ledge of ModifiedAlain to look like wood boards because the intent of the decorative ledge was to look like stone, and making it look like wood would just be a simple aesthetic change to allow the decorative ledge match the rest of the structure.

Regarding Claim 37

(Original) The kit according to claim 24, wherein the decorative ledge is shaped so as to mimic a plurality of wood boards.

Regarding Claim 15

(Original) The above-ground swimming pool according to claim 1, wherein each of the decorative panels 27/37/38/39 is shaped so as to mimic a series of vertical wood boards.

It would be obvious to one having ordinary skill in the art at the time of the invention to have made the decorative panels of Modified Alain to look like vertical wood boards because the intent of the decorative panels was to enhance to look of the design, and making it look like vertical wood would just be a simple aesthetic change to allow the decorative panels to have the known wood look, just in a different direction.

Regarding Claim 31

(Original) The kit according to claim 24, wherein each of the decorative panels 27/37/38/39 is shaped so as to mimic a series of vertical wood boards.

Regarding Claims 38-44

The method steps as claimed are satisfied during the normal operation and use of the modified Alain toilet locking device. The method steps merely recite structural features that are found in the modified Alain device.

7. Claims 20, 21, 34, 35 are rejected under 35 U.S.C 103(a) as being unpatentable over Modified Alain in view of US Patent No. 5,866,264 to Zehner.

Regarding Claim 20

(Original) The above-ground swimming pool according to claim 1, wherein the decorative panels are made from extruded plastic (column 1, lines 40-50).

It would be obvious to one having ordinary skill in the art at the time of the invention to have made the incorporated the synthetic wood of Zehner into the design of Alain because not only is synthetic wood cheaper, Zehner teaches that the synthetic wood is suitable for use in place of natural wood (column 1, lines 5-10).

Regarding Claim 21

(Original) The above-ground swimming pool according to claim 1, wherein the decorative panels are made from thermoformed plastic (column 1, lines 40-50).

Regarding Claim 34

(Original) The kit according to claim 24, wherein the decorative panels are made from extruded plastic (column 1, lines 40-50).

Regarding Claim 35

(Original) The kit according to claim 24, wherein the decorative panels are made from thermoformed plastic (column 1, lines 40-50).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIN YOKAY whose telephone number is (571)270-7429. The examiner can normally be reached on Monday through Thursday 7:30-5:00, Every other Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bomberg Ken can be reached on (571)272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EY

/David J. Isabella/

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